IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 2 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF SALES-TAX

Versus

MAHADEV SUNDERJEE

Appearance:

1. SALES TAX REFERENCE No. 2 of 1994
MR SUDHIR MEHTA, AGP. for Applicant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following question has been referred to this Court under the provisions of Section 69(1) of the Gujarat Sales Tax Act,1969, for its opinion :

"Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was justified in holding that the turnover in question could not be said to have escaped assessment and that provisions of Sec.44 of the Gujarat Sales Tax Act,1969 could not be invoked and consequently in setting aside the order of reassessment dated 16/3/1977 for S.Y.2028 passed by the Sales Tax Officer and confirmed by the Assistant Commissioner of Sales Tax under Sec. 44 of the Gujarat Sales Tax Act,1969 under which the contention about purchases as made from registered dealers was disallowed and the taxable sales were determined at Rs.1,28,460/- and penalty of Rs.1,798.12 was levied under Sec.45(6) of the Gujarat Sales Tax Act,1969?"

2 Mr.Sudhir Mehta, learned Assistant Government Pleader has appeared for the applicant-revenue whereas none has appeared on behalf of the opponent-assessee though served. The learned Assistant Government Pleader has drawn our attention to the judgment delivered by this High Court in the case of M/s.New Uttam Soap Factory V/s. The State of Gujarat in Sales Tax Reference No.17 of 1988 and submitted that the question which has been referred to this Court in the present case and the question which has been decided in the aforesaid decision is the same.

3 Looking to the law laid down by this Court in the aforesaid decision, we answer the question referred to this Court in the Negative i.e. in favour of the revenue and against the assessee.

4. The Reference stands disposed of accordingly with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt

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